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5 Attorneys for Defendant
6 SMITH'S FOOD & DRUG CENTERS, INC.

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

9 SABINE BARCLAY and ROBERT
10 BARCLAY, husband and wife,

11 Plaintiffs,

12 vs.

13 THE KROGER COMPANY, a foreign
corporation, d/b/a SMITH'S FOOD & DRUG
CENTERS, INC; DOES I through XX; and
14 ROE CORPORATIONS, I-XX, inclusive.

15 Defendants.

Case No. 2:18-cv-01046-RFB-CWH

**STIPULATION AND ORDER TO
DISMISS THE KROGER COMPANY
ONLY, WITHOUT PREJUDICE**

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17 WHEREAS, prior to removing this case to federal court, the parties had submitted a stipulation
18 to dismiss defendant THE KROGER CO., improperly identified as THE KROGER COMPANY, from
19 this litigation and to amend the caption to reflect said change; and

20 WHEREAS, the stipulation was submitted to the State Court Judge prior to Defendant filing its
21 Notice of Removal yet the stipulation was not signed by the State Court Judge until after Defendant had
22 filed its Notice of Removal and counsel for the parties hereby submit this stipulation to this Court to
23 ensure that the Court is aware of the dismissal of said defendant;

24 IT IS HEREBY STIPULATED AND AGREED by and between CHARLES A. MICHALEK,
25 ESQ. of the law firm ROGERS, MASTRANGELO, CARVALHO & MITCHELL, LTD. as counsel for
26 Plaintiffs SABINE BARCLAY and ROBERT BARCLAY and JERRY S. BUSBY, ESQ. of the law firm
27 COOPER LEVENSON, P.A. as counsel for Defendants SMITH'S FOOD & DRUG CENTERS, INC.
28 improperly identified in the Complaint as "THE KROGER COMPANY d/b/a SMITH'S FOOD &

1 DRUG CENTERS, INC.” as follows:

- 2 1. That Defendant THE KROGER COMPANY **only** be dismissed, without prejudice, with
3 each party to bear its own attorney fees and costs, if any, related to the naming of THE
4 KROGER COMPANY as a Defendant in this litigation;
- 5 2. That this dismissal applies **only** to Defendant THE KROGER COMPANY and the litigation
6 shall continue between Plaintiffs SABINE BARCLAY and ROBERT BARCLAY and
7 Defendant SMITH’S FOOD & DRUG CENTERS, INC.; and
- 8 3. That in the event Plaintiff finds good cause to later include Defendant THE KROGER
9 COMPANY in this litigation, Plaintiff shall have until the deadline for amending the
10 pleadings established by the Court to file either a stipulation or a motion to amend to include
11 THE KROGER COMPANY again as a Defendant in this litigation.

12 IT IS FURTHER STIPULATED AND AGREED that the caption of this case be amended as set
13 forth below to indicate that SMITH’S FOOD & DRUG CENTERS, INC. is the Defendant in this case.

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1 SABINE BARCLAY and ROBERT
2 BARCLAY, husband and wife,

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4 Plaintiffs,

5 vs.

6 SMITH'S FOOD & DRUG CENTERS, INC;
7 DOES, a foreign corporation, d/b/a SMITH'S;
8 I through XX; and ROE CORPORATIONS, I-
9 XX, inclusive.

10 Defendants.

Case No. 2:18-cv-01046-RFB-CWH

11 DATED: July 31, 2018

DATED: July 31, 2018

12 ROGERS, MASTRANGELO,
13 CARVALHO & MITCHELL, LTD.

COOPER LEVENSON, P.A.

14 /s/ Charles A. Michalek, Esq.
15 CHARLES A. MICHALEK, ESQ.
16 Nevada Bar No. 005721
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19 (702) 383-3400
20 Attorneys for Plaintiffs
21 SABINE and ROBERT BARCLAY

22 /s/ Jerry S. Busby
23 JERRY S. BUSBY, ESQ.
24 Nevada Bar No.001107
25 1835 Village Center Circle
26 Las Vegas, Nevada 89134
27 (702) 366-1125
28 Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

ORDER

IT IS SO ORDERED that:

1. Defendant THE KROGER COMPANY only be dismissed, without prejudice, with each party to bear its own attorney fees and costs, if any, related to the naming of THE KROGER COMPANY as a Defendant in this litigation;
2. This dismissal applies **only** to Defendant THE KROGER COMPANY and the litigation shall continue between Plaintiffs SABINE BARCLAY and ROBERT BARCLAY and Defendant SMITH'S FOOD & DRUG CENTERS, INC.;
3. In the event Plaintiff finds good cause to later include Defendant THE KROGER COMPANY in this litigation, Plaintiff shall have until the deadline for amending the pleadings established by the Court to either file either a stipulation or a motion to amend to include THE KROGER COMPANY again as a Defendant in this litigation; and

